Directors of the second plaintiff-company and those allegations are set out again here. They are that :—

(a) The mine is in an abandoned condition;
(b) Looting has taken place;
(c) Illegal mining has taken place;
(d) Valuable plant and machinery are not properly protected from the weather;
(e) The mine is flooded;
(f) The mine is subject to the risk of fires;
(g) The mine is not properly protected, because no watchmen are employed.

These allegations are denied by the defendant in his affidavit in reply to the affidavit of the Chairman of the Board of Directors of the second plaintiff-company already mentioned. In addition, the defendant has exhibited a report on this mining property by an independent Consulting Mining Engineer, Mr. Hamplen Jones, and this report refutes and answers the allegations that mining property is in jeopardy.

On the facts before me I am unable to find it proved that this property is in jeopardy. This finding of fact is an additional reason why I am unable to accede to this motion to appoint an Interim Receiver.

The motion is accordingly dismissed with costs to the defendant.

Motion Dismissed.

HAJI MOHAMED BIN HAJI PUTEH v. HAKIM S. M. ANWARI ALI SHAH.

[Orig. Civil Juris. (Willan, C.J.) August 27, 1947]

Landlord and tenant — Rent and Charged Land (Restriction) Enactment (F.M.S.) 1940, Section 7 — Material date at which rent should be in arrears in order that a Landlord may succeed in a suit in Court to recover his premises without the permission of the Rent Assessment Board.

In this case the premises in question No. 90 Batu Road, Kuala Lumpur, formed part of the estate of Jali Urani binte Haji Samad of which the Plaintiff was the administrator. The defendant was a monthly tenant of the premises since 1939. In or about the month of February 1946 the defendant left for India, leaving one Shukur Din as his attorney in Malaya. From the evidence it was clear that the defendant's attorney did not live on the said premises, but that he as defendant's attorney, carried on a partnership business there. The plaintiff admitted in evidence that the plaintiff's attorney resided at 77 Java Street, Kuala Lumpur and he also admitted that it was from this address that he usually received letters from him. On the 15th day of February 1947, since the rent for January 1947 had been in arrears for fourteen days, the plaintiff sent by A.R. post a notice to quit addressed to the defendant's attorney at No. 90 Batu Road, Kuala Lumpur. This was returned to the Plaintiff undelivered. On the 18th day of February 1947 the plaintiff received by registered post a cheque from the defendant's attorney for the arrears of rent due. On the 21st of February 1947, the plaintiff again sent by A.R. post the notice to quit addressed to the defendant's attorney at No. 77 Java Street, Kuala Lumpur. This time the notice was received but by then the defendant's attorney had tendered the arrears of rent due. The defendant's attorney refused to give vacant possession and the plaintiff thereupon instituted the present suit. It was argued for the plaintiff (1) that the proviso to section 7 of the Rent and Charged Land (Restriction) Enactment applied whenever the rent has been in arrear for fourteen days and that it was immaterial that the arrears of rent had been tendered before the notice to quit came to the notice of the defendant's attorney (2) that the defendant's attorney had deliberately evaded service by refusing to accept the first A.R. letter, which contained the notice to quit.

Held, (1) that the material date at which rent should be in arrears in order that a landlord may succeed in a suit in Court to recover his premises without permission of the Rent Assessment Board is the date of the service of the notice to quit; (2) that there was in this case no evidence of deliberate evasion on the part of the defendant's attorney and (3) that as the defendant's attorney was not in arrears with his rent when the notice to quit came to his notice, the plaintiff must fail in his suit.

Case referred to :—

(1) *Hogg v. Brooks* 15 Q.B.D. 256.

CIVIL SUIT.

W. G. W. Hastings for the Plaintiff.

A. K. Sen for the Defendant.

Willan, C. J. : — In this case the plaintiff is the administrator of the estate of Jali Urani binti Haji Abdul Samad, deceased, and the premises known as No. 90 Batu Road, Kuala Lumpur, form part of that estate.

The defendant has been a monthly tenant of those premises since the year 1939, first at a monthly rental of forty dollars, and subsequently this rent was increased to fifty-five dollars per month.

In or about the month of February, 1946, the defendant left for India, leaving one Shukur Din as his attorney in this country.

From the evidence it is clear that the defendant's attorney did not live on the said premises, but that he, as defendant's attorney, carried on a partnership business there.

The plaintiff admitted in evidence that the defendant's attorney resided at No. 77 Java Street, Kuala Lumpur, and he also admitted that it was from this address that he had usually received letters from him.

Since the rent for January, 1947, had been in arrears for fourteen days the plaintiff, on the 15th day of February, 1947, sent by A. R. post a notice to

quit addressed to the defendant's attorney at No. 90 Batu Road, Kuala Lumpur. This was returned to the plaintiff undelivered. On the 18th day of February, the plaintiff received by registered post an undated cheque from the defendant's attorney for the arrears of rent due. The fact that the cheque was undated is immaterial because the plaintiff could have dated it himself.

On the 19th day of February, 1947, the plaintiff wrote to the defendant's attorney, and this time he addressed his letter to No. 77 Java Street, Kuala Lumpur, where the defendant's attorney resided, informing him as follows :—

> I am to inform you that I have already sent you on 15th instant a notice to quit and give vacant possession of the said premises to me on the 31st day of March, 1947, as you have totally failed to pay rent for the month of January 1947.
>
> You should therefore comply with my said notice dated 15th instant, as you are always an irregular and troublesome tenant.
>
> With regard to your said undated cheque, as I cannot cash it, I am retaining it with me to be shown to Court when I institute ejectment proceedings, if you fail to quit according to my said notice.

On the 21st day of February, 1947, the plaintiff again sent by A.R. post the notice to quit, addressed to the defendant's attorney at No. 77 Java Street, Kuala Lumpur. This time the notice was received, but by then the defendant's attorney had tendered the arrears of rent due.

The defendant's attorney refused to give vacant possession and so the plaintiff instituted this suit.

Mr. Sen, for the defendant, submitted that since the defendant's attorney was not in arrears with his rent when the notice to quit came to his notice, the plaintiff could not commence any ejectment suit in Court without the permission of the Rent Assessment Board, in accordance with section 7 of the Rent and Charged Land (Restriction) Enactment 1940, of the Federated Malay States.

Mr. Hastings, for the plaintiff, submitted that the proviso to that section applies whenever the rent has been in arrear for fourteen days, as in this case, and that it was immaterial that the arrears of rent had been tendered before the notice to quit came to the notice of the defendant's attorney.

I am unable to agree with that submission. The material date at which rent should be in arrears in order that a landlord may succeed in a suit in Court to recover his premises without permission of the Rent Assessment Board is the date of service of the notice to quit.

Mr. Hastings further submitted that the defendant's attorney had deliberately evaded service by refusing to accept the first A.R. letter, which contained the notice to quit, and that he should not derive any advantage from his own evasion.

There is no evidence of deliberate evasion on the part of the defendant's attorney, and the Court of Appeal decision in the case of *Hogg v. Brooks*[1] is against this second submission made by Mr. Hastings.

Accordingly the plaintiff must fail in this suit, and there will be judgment for the defendant with costs.

Suit Dismissed.

PUBLIC PROSECUTOR v. SALAMAH BINTE ABDULLAH and PUBLIC PROSECUTOR v. ONG ENG KIAT.

[App. Crim. Juris. (Taylor, J.) July 26, 1947]

Criminal Procedure Code Section 113 — Evidence Ordinance Section 27 — Statement to Police — Admissibility — Alteration of Charge — Criminal Procedure Code Section 173.

These two appeals were dealt with together as they raised similar questions as to the admissibility of statements made to the Police in the course of a Police investigation. Section 113 of the Criminal Procedure Code provides that no statement made to a Police Officer in the course of an investigation shall be used as evidence and also gives a number of exceptions to this rule. One of these exceptions is when the statement relates to the discovery of a fact and then so much of the statement as distinctly relates to the discovery may be proved under Section 27 of the Evidence Ordinance.

Held, (1) that statements by an accused person to the Police in consequence of which facts are discovered, are admissible only if the accused was in actual custody at the time; (2) that the admissible portion of such statement is limited to the facts discovered and does not extend to other information about the articles found.

Observations as to the alteration of charges. The alteration of a charge after the close of the defence should not be prejudicial to the accused.

Case referred to :—

(1) *Sambu v. Rex* (1947) M.L.J. 18.

Taylor, J. : — As these two appeals raise similar questions of the admissiblity of evidence it is convenient to deal with them together. In the first case the appellant, who is a married woman with five children, was convicted of dishonestly receiving some stolen cloth and sentenced to two months simple imprisonment.

The facts are simple. One Nayan, a relative of the appellant robbed a pedestrian of a bundle of clothing; the time of day at which this occurred is not stated. In the middle of the night of, or following, the robbery Nayan handed two of the stolen articles to the appellant to keep for him. On the following day a Police Officer, who was investigating the report